



Appeal Decision

Site visit made on 31 May 2023

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 July 2023

Appeal Ref: APP/Q1445/W/23/3318920

Rayford House, School Road, Brighton & Hove, Hove BN3 5HX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Hussain (Inspire Property Investments) against the decision of Brighton & Hove City Council.
- The application Ref BH2023/00009, dated 2 January 2023, was refused by notice dated 9 February 2023.
- The application sought planning permission for erection of four storey extension to east side to form 4no additional 2 bedroom dwellings and associated works without complying with conditions attached to planning permission Ref BH2020/00955, dated 22 June 2020.
- The conditions in dispute are Nos 1 and 13.
- Condition 1 states: The development hereby permitted shall be carried out in accordance with the approved drawings listed below: Location Plan 6778-2P01 (30 March 2020), Proposed Drawing 6778-2P02 C (8 June 2020), Proposed Drawing 6778-2P03 C (12 June 2020), Report/Statement Desk Study Report (30 March 2020), Report/Statement Planning Noise Assessment (30 March 2020), Report/Statement Energy & Sustainability Statement (30 March 2020), Proposed Drawing 6778-2P04 (8 June 2020).

The reason given for condition 1 is: For the avoidance of doubt and in the interests of proper planning

- Condition 13 states: The two points of pedestrian access hereby approved to the eastern boundary of the site shall be provided prior to the first occupation of the flats hereby approved, and shall retained thereafter with no means of preventing access installed.

The reason given for condition 13 is: To encourage safe, active and sustainable forms of travel other than private motor vehicles to and from the development, and to ensure that this is retained in compliance with Policies TR7 of the Brighton & Hove Local Plan and CP9 of the Brighton & Hove City Plan Part One

Decision

1. The appeal is allowed and planning permission is granted for erection of four storey extension to east side to form 4no additional 2 bedroom dwellings and associated works at Rayford House, School Road, Brighton & Hove, Hove BN3 5HX in accordance with the application Ref BH2023/00009 dated 2 January 2023, without compliance with condition numbers 2 to 17 previously imposed on planning permission Ref BH2020/00955 (hereafter referred to as 'the original permission') dated 22 June 2020 and subject to conditions 1 to 15 in the attached schedule.

Application for costs

2. An application for costs was made by Inspire Property Investments against Brighton & Hove City Council. This application is the subject of a separate decision.

Preliminary Matters

3. For the avoidance of doubt, from the outset I wish to highlight that I have allowed this appeal but not in the terms sought by the appellant. Whilst I have removed Condition 13 of the original permission, I have substituted this condition with another. The appellant had sought its removal in its entirety. Nonetheless, the substitute condition is less onerous (from the appellant's point of view) than Condition 13, as explained later in this decision letter. I have also made other variations and a deletion to reflect consents granted since the original permission was granted.
4. The evidence indicates that when the appeal was submitted it was for retrospective permission for the removal of the two access points on the eastern boundary of the appeal site. However, having visited the site I note that there are currently no access gates installed, which implies that they have recently been removed. However, the appeal does relate to an application for retrospective permission insofar as the flats have already been constructed and the evidence suggests that they are occupied.

Background and Main Issue

5. Planning permission was granted in 2020 under Council reference BH2020/00955 for a four-storey extension to an existing block of flats to provide four residential units (the 'original permission'). Condition 13 of the original permission requires that two pedestrian access points are provided on the eastern boundary of the appeal site prior to first occupation of the four approved flats. The pedestrian access points are also shown on plan reference 6778-2PO2 Rev C which is listed under Condition 1 of the original permission.
6. The reason given for the condition is to encourage safe, active and sustainable forms of travel other than private motor vehicles to and from the development, and to ensure that this is retained in compliance with City Plan Part 1¹ and 2² Policies TR7 and CP9.
7. The two access points facilitate pedestrian access between the appeal site and Payne Avenue to the east.
8. The appellant asserts that conditions 1 and 13 are neither relevant, reasonable nor necessary. The appellant contends that the impact would result in increased crime or fear of crime, resulting from unhindered access through the residential development. In addition, the appellant asserts that the condition frustrates the stated reasons for its imposition.
9. As such, the appellant seeks the removal of Condition 13 and the variation of Condition 1 to include reference to a revised plan (6778-2PO2 Rev E to replace 6778-2PO2 Rev C). The revised plan shows the two access points to the east of the appeal site removed.

¹ Brighton & Hove City Plan Part One (March 2016)

² Brighton & Hove City Plan Part Two (October 2022)

10. The main issue is therefore whether Condition 1 and 13 are relevant, necessary and reasonable with regard to development plan policy requirements promoting sustainable modes of transport and safe/convenient access to new development and whether they give rise to increased crime or fear of crime.

Reasons

The Development Plan

11. City Plan Part 1 Policy CP9 is a broad strategic policy which outlines the Council's strategy for sustainable transport. Whilst it does refer to walking and sustainable transport measures, there are no specific requirements in the policy which would be conflicted with if the pedestrian access points to the east of the appeal site were removed. However, this is primarily due to the wording of the policy and its more wide-ranging strategic nature.
12. City Plan Part 2 Policy DM33 provides a more applicable policy for development management purposes. It outlines that the council will promote and provide for the use of sustainable transport and active travel by prioritising walking, cycling and public transport in the city. It also specifically sets out requirements for new development in order to encourage walking and public transport use. Part 1(a) requires safe, comfortable and convenient access to and from proposed development for all pedestrians, irrespective of their level of personal mobility and cognition. Part 1(b) requires, where appropriate, that development contributes towards improvements to the wider pedestrian environment. Part 3(a) also requires new development to be located and designed to provide good access to public transport services and facilities, in order to promote and provide greater levels of public transport usage in the city.

Whether the conditions are relevant to the development to be permitted

13. A significant number of objections have been received from local residents. Those objecting are overwhelmingly of the opinion that the two pedestrian links to the east of the appeal site were an important consideration when the original planning application was determined. Many local residents feel that this was a key benefit of the proposal. However, e-mail correspondence between the Council and the appellant's architect indicates that it was made clear to the Council that the appellant could not legally accept the access through the site, as a public thoroughfare, due to liability issues. This exchange of e-mails occurred when the Planning Officer sought to confirm the acceptability of proposed planning conditions with the appellant. Indeed, it appears to have resulted in the Planning Officer removing any reference to 'public access' from the proposed condition.
14. However, the wording of Condition 13 outlines that the access points shall be retained with no means of preventing access installed. This effectively ensures that the access points are available for use by members of the public, given the wide-ranging prohibition resulting from the term 'no means of preventing access'.
15. There is no substantive evidence before me to indicate that the development approved under the original permission, comprising an extension to provide four flats, has worsened access to sustainable transport or local services and facilities for local residents. As such, it is neither the role nor responsibility of

this development to facilitate or improve access for existing local residents (other than those occupying the approved flats) to services and facilities in the area (including the nearest train station). Indeed, whilst the Council has indicated that it attributed weight to the benefit of providing the access points, it has not provided any substantive evidence to indicate that this weight was necessary to outweigh any identified harm from the proposal.

16. The Council's Statement of Case indicates that the scale of the wider development, comprising of 57 residential units, is such that 'provision of new access routes as a public benefit' is warranted. However, again there is no substantive evidence to indicate that the wider scheme has reduced public access to services and facilities. Furthermore, there is no explanation as to why the four units approved under the original planning permission were the tipping point necessitating the provision of public access through the site.
17. Framework Paragraph 57 requires, amongst other things, that planning conditions are 'relevant to planning and to the development to be permitted'. As worded, Condition 13 does not meet this test for the reasons set out above. I have sympathy for interested parties (including local residents and at least one local Councillor) many of whom were clearly under the impression that the original proposal lawfully provided for public access through the appeal site. Nonetheless, for the reasons outlined above, such a requirement is not directly related to the development and therefore does not accord with Framework Paragraph 57.
18. In reaching this conclusion I have given careful consideration to whether or not the inclusion of the access points on plan reference 6778-2PO2 Rev C means that the two conditions are directly related to the development. Given that the access points were part of the proposal, they are directly related to the proposal. However, with regard to my earlier observation that the Council were made aware that public access was not part of the proposal, a requirement imposed by the Council which effectively allows the use of the access points by members of the public is not directly related to the development.
19. City Plan Policy DM33 refers to the need to provide safe, comfortable and convenient access to and from proposed development for 'all pedestrians'. However, the use of the term 'all pedestrians' logically encompasses those who are occupiers/users of the development, those who are served by it or those who are obstructed by it. Indeed, if the reference to 'all pedestrians' were to be construed as implying that access should be provided to all members of the public then Policy DM33 would require all new development to allow safe and convenient access to members of the public, which would be a completely illogical interpretation.
20. Whilst I have concluded that Condition 13 would not be relevant to the development permitted, that conclusion is only made on the basis that it effectively facilitates public access through the site. In contrast, Conditions 1 and 13 are both relevant insofar as they apply to the four approved residential units. Indeed, both conditions have the effect of encouraging occupiers of the approved dwellings to walk and access sustainable modes of transport, in accordance with City Plan Policy DM33. Whether or not it is necessary for conditions 1 and 13 to do so, is a matter which I now turn to.

Whether the conditions are necessary

21. The evidence before me indicates that the appeal site has good access to services and facilities. In terms of access to sustainable transport, there are bus stops nearby and the nearest train station is Aldrington to the east. The two access points on the eastern boundary of the appeal site provide a shorter pedestrian route (approximately 535 metres) from the proposed development to the train station than would otherwise be the case (approximately 975 metres via School Road).
22. The appellant's evidence indicates that this difference would only equate to a time saving of 4.5 minutes. However, given that the distance to the train station on foot would almost double without the access points, their removal would inevitably reduce the likelihood that occupiers would access the train station on foot, particularly those with mobility and visual impairments. When I visited the appeal site, I found the longer route via school road to be significantly more arduous and inconvenient, given the number of turnings, the length of the route and its indirect nature.
23. Condition 13 as currently worded is not necessary for reasons already given with reference to its relevance. However, I conclude that a condition requiring that the access points are retained and available for use by occupiers of the four residential units is necessary to ensure compliance with City Plan Policy DM33, insofar as it requires good access to sustainable transport as well as safe, comfortable and convenient access to and from the proposed development. Condition 1 is necessary for the same reason as it includes a reference to plan number 6778-2PO2 Rev C which shows the two access points on the eastern boundary.
24. There are bus stops, services and facilities, on Portland Road to the south of the appeal site. The eastern access points would not have any significant bearing on access to them. However, Framework Paragraph 110a) states that, in assessing new development, decision takers should ensure that appropriate opportunities to promote sustainable transport modes can be (or have been) taken up, given the type of development and its location. Based on my conclusions it is necessary that safe and convenient access to Aldrington train station via the pedestrian access points is secured for occupiers of the four residential units.

Whether the conditions are reasonable

25. The appellant and various local residents have outlined that the conditions are unreasonable as they facilitate public access through the site resulting in increased crime or risk of crime to occupiers of the development and neighbouring residents (particularly those residing on Payne Avenue). The appellant also highlights that the Council's Crime Prevention consultee did not comment specifically on crime prevention measures when consulted on the original planning application.
26. However, there is no substantive evidence of there being any particular problem with crime occurring locally. There is a general assertion made within the Council's Statement of Case that crime is 'above average' in the Brighton & Hove area when compared to the rest of Sussex. However, this general observation is not site-specific and clearly does not provide an evidential basis to indicate that access through the appeal site would increase the prevalence or risk of crime occurring.

27. Indeed, it is not uncommon for pedestrian access to be provided between residential areas and given the number of flats and dwellings in close proximity there is a high degree of natural surveillance which significantly reduces the risk of crime. As such, the conditions, as currently worded, both accord with the requirements of City Plan Part 1 Policy CP12 and City Plan Part 2 Policy DM20 which collectively seek to safeguard the living conditions of existing and future residents in part through deterring crime. The conditions as currently worded also accord with the provisions of Framework Paragraph 130 in relation to crime.
28. Despite this, Condition 13 (as worded) is unreasonable for the reasons I have already outlined in relation to its relevance to the development to be permitted. However, rather than completely remove the condition (and the access points) it would be reasonable to retain condition 1 as worded and vary condition 13 such that it requires that that access is available for use by occupiers of the approved residential units, given my earlier conclusions with regard to the necessity for such a condition.
29. The appellant refers to planning permission reference BH2016/02583 where the Council granted consent for 104 dwellings, allegedly resulting in closure of a previous pedestrian access to Stoneham Road to the south of the site. The appellant also refers to various other decisions in relation to the appeal site, where it is indicated that the Council did not impose similar requirements to those set out under Condition 13. However, these previous decisions do not alter the existing site-specific circumstances. They might provide an indication of how those circumstances arose, but they do not change my conclusions with regard to whether or not the condition is reasonable.

Other Matters

30. Several local residents have outlined concerns in relation to other matters including impact on living conditions (resulting from increased noise) and adverse impacts on highway safety. However, given that I am imposing a new condition which would ultimately have a no more harmful effect than that of Condition 13 as currently worded (as if anything, the revised condition provides the appellant with the prospect of controlling access), these considerations do not alter my findings.
31. An interested party has outlined that the 'level access' shown on the approved block plan is not level as it has been installed with a step. However, the extent to which there is any breach of the requirements of condition 1 in this regard is a matter between the main parties and does not alter my conclusions in relation to this appeal.

Conditions

32. Condition 1 of the original permission should not be varied because I have concluded that the two access points (as shown on plan reference 6778-2PO2 Rev C) should be retained for use by occupiers of the proposed development.
33. Condition 13 should be removed and substituted, for reasons given earlier in this decision letter. The substitute condition [New Condition 11] should state:

'The two points of pedestrian access hereby approved, as shown on plan reference 6778-2PO2 Rev C to the eastern boundary of the site, shall be

retained in accordance with the approved plan for use by occupiers of the four dwellings hereby approved'

34. These two conditions are necessary in the interest of ensuring that occupiers of the development have good and convenient pedestrian access to sustainable modes of transport. The effect of the new condition [11] is that it requires that the two access points are retained for use by occupiers of the approved dwellings. In contrast, the existing condition effectively allows and requires provision of public access through the appeal site. The substitute condition removes this requirement.
35. The substitute condition does not however prohibit the appellant from allowing use of the access by other occupiers of the development or members of the public. In other words, it is up to the appellant whether to prohibit access to anyone other than the occupiers of the four flats. However, it should be noted that this planning permission does not grant permission for the installation of gates or other physical means of obstruction which might require separate planning permission, given that there are no appropriate plans before me which would achieve such an aim.
36. In terms of other planning conditions, various applications have been approved by the Council discharging the requirements of conditions attached to planning permission reference BH2020/00955. It is necessary to revise the wording of those conditions such that they refer to compliance with the approved details. The main parties have provided an agreed list of conditions to address this. I deal with each in turn.
37. Condition 2 of the original planning permission required that the development should be commenced within three years of the permission. Given that the development is occupied this condition is no longer necessary and should be removed.
38. Condition 3 of the original permission required submission of landscaping details for approval by the Council and implementation in the first planting season following completion of the development. The details were approved by the Council under application reference BH/2022/00241. However, the approved scheme has not been implemented. As such I have revised the condition to refer to the approved details and require their implementation within the next available planting season [New Condition 2], in the interests of character and appearance.
39. Condition 4 of the original permission required two bee bricks to be incorporated in the external wall. The evidence indicates that this has been undertaken and as such the condition should refer to their retention in the interest of biodiversity [New Condition 3].
40. Condition 5 of the original permission related to provision of details for bird and bat boxes. The Council approved these details under application reference BH2021/01156 and as such, this condition should be revised to a compliance condition [New condition 4] in the interest of biodiversity and protected species.
41. Condition 6 of the original permission required details of a sedum roof to be submitted and approved. The Council approved these details under application reference BH2021/01156. As such, this condition should be revised to refer to

- the approved details [New Condition 5] in the interest of character and appearance and biodiversity. The appellant has confirmed that the sedum roof has not been implemented and as such, it should be implemented in the next available planting season after the date of this decision.
42. Condition 7 of the original permission relates to the use of porous hard-surfacing material. This condition is necessary to ensure retention of such material in the interest of drainage [New Condition 6].
 43. Condition 8 of the original permission related to parking permits and was removed under planning permission BH2021/04111. Given the fallback position provided by this permission it is not considered necessary to re-impose condition 8.
 44. Condition 9 of the original permission related to provision of parking spaces. The evidence indicates that these have been provided and as such this condition should be amended to take this into account but ensure their retention, in the interest of highway safety [New Condition 7]. Condition 10 of the original permission should be retained unmodified, in the interest of highway safety, as it relates to the retention of the parking spaces [New Condition 8].
 45. Original Condition 11 required the implementation and retention of the approved cycle parking. This provision has been implemented and the condition should be varied to take account of this [New Condition 9] in the interest of sustainable transport.
 46. Condition 12 of the original permission required details to be submitted in respect of priority road signage. These details were approved by the Council under application reference BH2021/01156 and have been implemented. The condition should be varied to reflect this in the interest of highway safety [New Condition 10].
 47. Condition 14 of the original permission required details to be submitted and approved in respect of ventilation. These details were approved under Council reference BH2021/01156. The condition should be varied to reflect this [New Condition 12] in the interest of the living conditions of occupiers of the development.
 48. Condition 15 of the original permission related to the need to submit details for approval in respect of a site investigation report (contamination). These details were approved under application reference BH2022/00241. The condition should be varied to take account of this and ensure compliance with the approved details in the interest of public health [New Condition 13].
 49. Conditions 16 and 17 of the original permission related to energy and water efficiency requirements respectively. These conditions should be varied [New Conditions 14 and 15] to take account of the fact that the development has been occupied, in the interest of compliance with development plan policies on water and energy efficiency.
 50. As varied, these conditions all meet the tests for planning conditions set out within the Framework.

Conclusion

51. The proposed development, when taking into account the revisions to the conditions which I have set out above, would comply with the development plan. There are no material considerations raised which indicate a decision other than in accordance with the development plan. As such, the appeal is allowed, but not in the terms sought by the appellant. This is because I have concluded that a condition 1 and a revised condition replacing condition 13 are still necessary to ensure that occupiers of the development have convenient pedestrian access to sustainable modes of transport.

Luke Simpson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 6778-2P01 (30 March 2020), Proposed Drawing 6778-2P02 C (8 June 2020), Proposed Drawing 6778-2P03 C (12 June 2020), Report/Statement Desk Study Report (30 March 2020), Report/Statement Planning Noise Assessment (30 March 2020), Report/Statement Energy & Sustainability Statement (30 March 2020), Proposed Drawing 6778-2P04 (8 June 2020).
- 2) The approved landscaping scheme shall be implemented in accordance with the details approved by BH2022/00241 in the first planting season after the date of this decision. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 3) Two bee bricks shall be retained within the external wall of the development hereby approved.
- 4) The type, number, location and timescale for implementation of the compensatory bird and bat boxes shall be carried out in strict accordance with the details approved under BH2021/01156 and thereafter retained.
- 5) A sedum roof shall be implemented in the next planting season after the date of this decision, in accordance with details approved under application reference BH2021/01156. It shall be retained as such thereafter.
- 6) Any hard surfacing shall be made of porous materials and retained thereafter or provision shall be made and retained thereafter to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the property.
- 7) Four car parking spaces (two for residents and two for visitors) within the car parking area pertaining to Rayford House shall be allocated for the occupiers of the four dwellings hereby approved.
- 8) The vehicle parking spaces shown on the approved plans shall not be used otherwise than for the parking of private motor vehicles and motorcycles belonging to the occupants of and visitors to the development hereby approved and shall be maintained so as to ensure their availability for such use at all times.
- 9) The cycle parking facilities hereby permitted shall be retained as shown on the approved plans for use by the occupants of, and visitors to, the development at all times.
- 10) The priority road signs approved under BH2021/01156 shall not be internally illuminated, endanger persons using the car park or obscure the ready interpretation of any traffic sign, and shall be retained as approved thereafter.

- 11) The two points of pedestrian access for the development hereby approved, as shown on plan reference 6778-2PO2 Rev C to the eastern boundary of the site, shall be retained in accordance with the approved plan for use by occupiers of the four dwellings hereby approved'
- 12) Ventilation provided to each flat within the development shall be implemented in accordance with the details approved under BH2021/01156 and be retained as such thereafter.
- 13) The development hereby approved shall be implemented in accordance with the Main Investigation Report, Supplementary Intrusive Investigation Letter Report and Topsoil Validation Letter submitted with and approved by BH2022/00241.
- 14) Each residential unit hereby approved shall have achieved an energy efficiency standard of a minimum of 19% CO2 improvement over Building Regulations requirements Part L 2013 (TER Baseline).
- 15) Each residential unit hereby approved shall have achieved as a minimum, a water efficiency standard of not more than 110 litres per person per day maximum indoor water consumption.